IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 22/2003

1. The Executive Engineer IV,
   Electricity Department, Aquem,
   Margao, Goa.

2. The Chief Engineer,
   Electricity Department,
   Vidyut Bhavan, Panaji, Goa.

3. The State of Goa,
   represented by the Chief Secretary,
   having office at Secretariat Bldg.,
   Panaji, Goa.

4. Mamlatdar of Salcete and
   Revenue Recovery Officer,
   Office, Salcete, Goa. ..... Appellants.

V/s.

M/s. Shirdi Steel Re Ro-rollers (P) Ltd.,
registered company under the Companies
Act, 1956, having its registered Office
at L 8, Cuncolim Industrial Estate,
Cuncolim, Goa. ..... Respondent.

Mr. P.A. Kamat, Government Advocate for the appellants.

Mr. Y.V. Nadkarni, Advocate for the respondent.

CORAM : B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE : 3RD NOVEMBER, 2004.

ORAL JUDGMENT : (Per MARLAPALLE, J.)

This appeal arises from the Judgment passed by the learned

IIIrd Addl. Civil Judge, Sr. Division, at Margao in Special Civil Suit No. 159/1999 on 21.3.2002 and it has been filed by the original defendants.

2. Defendants No.1 and 2 had issued supplementary bills for the energy charges towards the alleged consumption of electricity for the period from March, 1998 to September, 1999 and these bills came to be challenged in the suit as being illegal and without authority of law. The plaintiff M/s. Shirdi Steel Re-rollers (P) Ltd., is an industrial unit located in the Cuncolim Industrial Estate and an H.T. Consumer with contract demand of 1600 KVA. It was contended that the bills which were submitted on the basis of record, were paid by the plaintiff, but defendants No.1 and 2 issued supplementary bills for amounts of Rs. 2,84,819/-, Rs.43,14,487/- and Rs.26,15,529/-. It was contended by the plaintiff that there was no provision in the Indian Electricity Act, 1910 or the condition of supply to raise such supplementary bills. The case of the defendants was that they had taken measures to monitor the day today losses in the recorded consumption of the consumers and the supply from main feeder and they noticed that there was a shortage of about 5 % in the energy consumption. The trial Court, on assessment of the oral and the documentary evidence, as adduced by the respective parties, held that all the three demands made by defendants No.1 and 2 were illegal and, therefore, the demand notices dated 17.12.1999 and 22.2.2000 were held to be illegal. While decreeing the suit, the trial Court

directed refund of the excess amount i.e. Rs.4,22,047/- to the plaintiff with interest at the rate of 12 % per annum from the date of payment i.e. 23.12.1999 till the actual payment.

3. On behalf of the plaintiff, its Director Shri Yogesh Goyel was examined as PW.1; whereas, on behalf of the defendants DW.1 Shri D. Manchu Acharya, Executive Engineer and DW.2 Shri A.V. Faldessai, Executive Engineer, were examined. A number of documents were placed on record and proved through the witnesses by the the respective parties. We have gone through the oral and the documentary evidence as placed before the trial Court, as well as the reasoning given in support of the impugned decree. We are satisfied with the reasoning given by the trial Court in setting aside the demand notices and holding the three demands of the supplementary bills as illegal, and, therefore, that part of the Decree does not call for any interference. However, while directing refund of Rs.4,22,047/-, the trial Court ordered interest at the rate of 12 % per annum, while answering issue No.3. The plaintiff had claimed interest at the rate of 2% per month on the basis of condition No.31(1) of the Conditions of Supply. While rejecting this rate of interest, the trial Court relied upon the provisions of Section 34 of the Code of Civil Procedure and granted interest at the rate of 12 % per annum from the date of payment i.e. 23.12.1999 onwards. Mr. Kamat, the learned Government Advocate submitted that the provisions of Section 34, as made applicable to the instant case, are divided into two parts, namely

(a) the interest rate for the period from the date of payment till the date of Decree, at reasonable rate, as fixed by the Court; and (b) payment of interest on the date of Decree till the date of realisation or deposit of the amount. Admittedly, for the second period, the interest fixed, cannot be in excess of 6 % per annum. Whereas for the first period of about 3 years in this case, the reasonable rate has to be fixed by the Court and the trial Court has fixed the same at 12 % per annum. In our considered opinion, the interest at 12 % for the first period would not be justifiable.

4. Taking into consideration the nature of transaction in the instant case, namely electric supply by the State Government to an industrial unit, the interest amount deserves to be fixed at 10% per annum and that the lending rate of interest of the nationalised Banks during the period from 1999 till March, 2002. In the instant case, the amount was paid to the Government on 23.12.1999 and the suit was decreed on 21.3.2002 and, therefore, for the period from 23.12.1999 to 21.3.2002, the interest at 10 % and for the period from 21.3.2002 to 4.3.2003, the interest shall be charged at 6 % annum.

5. In the result, we allow this appeal, partly and while confirming the decree and holding the demands of additional charges of Rs.4,36,486/- and Rs.69,30,016/-, as illegal, we hold that defendants No.1 and 2 shall pay interest on the refund amount of Rs. 4,22,047/-

at 10% for the period from 23.12.1999 to 21.3.2002 and at 6% per annum for the period from 21.3.2002 to 4.3.2003. The Decree passed by the trial Court shall stand modified accordingly. No costs.

B.H. MARLAPALLE, J.

N.A. BRITTO, J.

ssm.